

EMOLUMENTS CLAUSE RESOLUTION

Mr. President, I come to the floor today to speak on behalf of a resolution I will file today on the Emoluments Clause, which seeks to uphold the values and strictures of one of our nation's most sacred documents: the Constitution itself.

The Founding Fathers were clear in their belief that any federal office holder of the United States must never be put in a position where he or she could be influenced by a foreign governmental actor.

Article I, section 9, clause 8 of the United States Constitution, known as the Emoluments Clause, declares that, and I quote:

“No title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” End quote.

Longstanding precedent has made it plain that the President of the United States, as the head of the executive branch of the government, clearly occupies an “office of profit or trust”. As such, the Emoluments Clause clearly applies to and constrains whomever holds the office of the Presidency. For those who claim to value a strict interpretation of the Constitution, and to place upholding the Constitution above partisan politics, the unambiguous reading and meaning are clear and evident.

Put simply, the American public has a right to know that the President of the United States is acting in *their* best interest, and not

because he or she has received some benefit or gift from a foreign government like Russia or China or any foreign entity. They need to know that the President of the United States is making decisions about potential trade agreements, sending troops into war, or where we spend America's great resources based on what is in the *public* interest and not because it would advance the President's *private* pecuniary interests.

The Founding Fathers' concerns on this subject were neither abstract nor baseless. Alexander Hamilton made specific references to these dangers in the Federalist Papers: While the Constitution was being debated in America, the Polish-Lithuanian Commonwealth was in the process of being ruthlessly dismembered by her neighbors – Prussia, the Austrian Empire, and Russia. Poland's neighbors bribed Polish government officials and succeeded in paralyzing the state for decades. The Founding Fathers placed the Emoluments Clause, an explicit bar on foreign corruption and interference, within the Constitution so that we may avoid Poland's fate.

Happily, the Emoluments Clause has not been a section of the Constitution that has had to be of concern of this body; nor is there voluminous case history detailing its legal interpretation with regard to the highest offices of the executive branch. This is because, Mr. President, every President, from George Washington to Barack Obama, have taken great pains to avoid even the *appearance* of impropriety with regard to their personal wealth and investments, ensuring that such investments never interfere with the performing their duties as President of the United States.

That is why, over the past four decades, Presidents Jimmy Carter, Ronald Reagan, George Herbert Walker Bush, Bill Clinton, and George W. Bush all had their assets placed into blind trust while they were President. President Obama went even further, because

he wanted to fulfill his promises of greater transparency – he invested the vast majority of his funds into U.S. Treasury bonds.

So I wish that well-established precedent and practice would make it unnecessary to introduce and seek to move this Resolution today. I wish that President-elect Trump would be inclined to continue the long-standing and bipartisan tradition of presidential traditions.

In September, Mr. Trump said that if he were elected, he “would absolutely sever” ties to the Trump Organization. Despite that pledge, it has since become clear that, absent intervention by this body, the President-elect may not follow the precedents established by his predecessors. And that in so doing he may well, for whatever reasons and with whatever motive, place himself and our Constitution in jeopardy.

As a separate and co-equal branch of government, the Senate has a duty and obligation to safeguard our Constitution. It is to the Constitution, after all, not to a person or a position, that we each swear our oath of office, and to nourish the republican virtues that have allowed our Nation and our government to flourish.

We must do so because following the election it appears that President-elect Trump may have changed his mind about the promises he made as he sought office. Mr. Trump’s lawyers announced that the Trump Organization would be placed into a *quote* “blind trust” *end quote* managed by Donald Trump’s older children, Donald Trump Jr., Ivanka Trump, and Eric Trump.

Let me be clear, as the gravity of this issue demands absolute clarity: the financial arrangements described by Mr. Trump and his lawyers is not a blind trust. It just isn’t. And we cannot allow Mr. Trump or his lawyers to trick us or the American people into thinking that it is just because they use that term.

A true blind trust, including ones established by past Presidents, is an arrangement where the official has no control over, will receive no communications about, and will have no knowledge of the identity of the specific assets held in the trust, and the trust's manager operates independently of the owner.

The arrangement described by Mr. Trump and his lawyers is not independent: Mr. Trump is well aware of the specific assets held and he can receive communications about and take actions to affect the value of such assets. And the idea that President-elect Trump's children are or will be truly "independent managers" is not credible. This is not a blind trust and this is not an arrangement that will ensure compliance with the Emoluments Clause of the United States Constitution.

Mr. Trump has said that there is no one like him who has ever become President of the United States. On that point, he may well be correct. I am very concerned that Mr. Trump may violate the U.S. the Constitution on the day he takes office and, even if it is not his intent, place himself and our Nation at risk. The purpose of my resolution today is to convey to the President-elect that there is still time for him to avoid this Constitutional conflict.

Some may ask, why should anyone care? Well, it's not hard to imagine circumstances in which a foreign governmental actor will want to give President Trump gifts so they can curry favor with him and hope to influence his decisions in ways that benefit *them*, when the President's decisions should benefit *the American people* – precisely the danger our Founding Fathers sought to protect against with the Emoluments Clause.

This is not an esoteric argument about rules that do not affect real people. The American public has the right to know if President Trump will put our soldiers, sailors, airmen, and marines in harm's way to protect America's national security, or to protect the latest

Trump Tower in some far-off country. They have a right to know if the trade agreements negotiated by the new administration will benefit American businesses, farmers, workers and consumers, or whether they will benefit some Trump company or hotel.

Donald Trump's business network, the Trump Organization, has financial interests around the world, and negotiates and concludes transactions with foreign states and entities that are extensions of foreign states.

To give but one example of how bad things can get if Mr. Trump is allowed to stay connected to his businesses: in Azerbaijan, the Trump Organization partnered with billionaire Anar Mammadov to build a 33-story Trump Tower in Baku, the capital of Azerbaijan. Mammadov's father is Azerbaijan's longtime transportation minister and a confidant of the President of Azerbaijan. There have been allegations that this billionaire's company, and companies he is connected to, have profited from more than \$1 billion worth of transportation contracts related to his father's position in the transportation ministry. A former U.S. Ambassador to Azerbaijan in the 1990s and an advisor to the Director of National Intelligence under George W. Bush has said of this deal, and I quote: "These are not business people acting on their own – you're dealing with daddy." End quote.

There are a great many nations, none of which we should emulate, where the lines between the officials of the foreign government and business entities controlled by that foreign government are blurred or obliterated. For that reason, the Office of Legal Counsel at the Department of Justice has stated that corporations owned or controlled by foreign governments are presumptively foreign states under the Emoluments Clause.

We should all be concerned when the President-elect is connected to an organization that has dealings with countries and entities that

aren't interested in distinguishing between doing business with President Trump, and the profit-making organization that bears his name. We run the risk of turning the United States of America, our legal system, our immigration system, our financial system, our trade agreements, our military into subsidiaries of Trump Organization.

It has already been reported that the Trump International Hotel in Washington, D.C. has been patronized by an increasing number of foreign dignitaries and diplomats because of Mr. Trump's election. One diplomat was recorded as saying "Why wouldn't I stay at his hotel blocks from the White House, so I can tell the new president, 'I love your new hotel!' Isn't it rude to come to his city and say, 'I am staying at your competitor'?"

Likewise, news reports suggest that one day after a phone call between President-elect Trump and the President of Argentina, permits under review by the Trump building in Buenos Aires were suddenly approved. And in China, just days after the presidential election, Donald Trump scored a legal victory in a decade-long trademark dispute over the right to use the Trump name for real estate agent services in commercial and residential properties in China. The timing of these actions is interesting, to put it mildly.

The appearance of intermingling between the business of Trump Organizations and the work of government has already begun. Despite Mr. Trump's campaign promise to sever ties to the Trump Organization, he stated "I'll have my children and my executives run the company and I won't discuss it with them," the Trump presidential transition team has named Mr. Trump's children Donald Trump Jr., Ivanka Trump, and Eric Trump to the transition team's executive committee – the same children who are supposedly managing the Trump Organization without discussing it with him. In those positions, they have the ability to offer counsel as to which

personnel are selected to critical posts in the new Trump administration.

Ivanka Trump reportedly has been present during Mr. Trump's congratulatory calls with Japan's Prime Minister and the President of Argentina. Donald Trump, Jr. reportedly met in secret prior to the elections with pro-Russia politicians to discuss Syrian policy. After the election, President-elect Trump met with Indian real estate executives – his partners in the developing Trump Towers in India – in which they allegedly discussed with the Trump family about the possibility of additional real estate deals. The list goes on and on, and the totality of these engagements and the potential implications are deeply, deeply disturbing.

And yet President-elect Trump has done nothing to assure the American people that he will put their interests above the enrichment of himself and his children, and that he will assure, as the Founders intended, that the president is not placed in a position where he might be vulnerable to foreign influence or even the appearance of foreign influence.

While Mr. Trump or his advisers may say “trust us”, let us remember what John Adams said: “We are a government of laws, and not of men.” It was the enduring wisdom of our Founders to recognize that not all men are angels and so we place our trust in the Constitution itself, not in individuals.

Mr. Trump's wealth and business interests must yield to the United States Constitution. Those wide-ranging interests make us realize just how critical the Constitutional prohibitions on foreign gifts is. The business that the Trump Organization does overseas in places like Scotland, Argentina, India, and Azerbaijan cannot help but be far from Mr. Trump's mind when he discusses matters of policies with foreign heads of state. This is not because President-elect Trump is any more susceptible to these temptations than

anyone else; but simply because, as the Founding Founders recognized, we are humans. Not angels.

This insight into human conditions elicited the precise fear articulated by our Founding Fathers: leaders who receive gifts and payments from foreign governments, being human, may not act in the best interests of the American people. To quote Richard Painter, an expert in ethics and an adviser to George W. Bush, “Imagine where we’d be today if President Franklin Roosevelt had owned apartment buildings in Frankfurt and Berlin...some of us might be speaking German...”

I am extremely troubled by Mr. Trump’s recent remarks on this subject. On November 22nd, President-elect Trump stated, “The law’s totally on my side, meaning, the president can’t have a conflict of interest.” In typical Trump sleight-of-the-hand, he selectively picks his own facts as he shows a troubling and callous disregard for our Constitution and for the duties he owes to the American people. While the President, Vice President, Members of Congress and Federal judges may be granted specific, limited exemptions from the conflicts of interest so that they may act and carry out their duties, that law does not supersede the Constitution nor, frankly, have anything to do with these very specific provisions of the Emoluments Clause – preventing foreign governmental financial influence over the President. The President-elect is not doing enough to avoid such conflicts and what brings me to the Floor today and, overall, according to one new poll, is troubling to nearly 60 percent of the people of this country.

The limited exception to the conflict of interest statute recognizes that there are certain public officials whose authority to act should not be held in question. The ability to act does not cure the restrictions in the Emoluments Clause of the Constitution.

The Constitution is the ultimate law of the land, not the President. Mr. Trump apparently doesn't appreciate the reasons that the law on this issue is untested is because previous presidents have had the wisdom and personal forbearance not to seek to put this question to the test.

But we have tested the unfortunate proposition that "when the president does it, that means it is not illegal" before and Congress, in service of the Constitution and the American people, has found that not to be the case. No one's above the law. No one's above the Constitution, including the President of the United States.

President-elect Trump has also tweeted, "Prior to the election it was well known that I have interests in properties all over the world." This is undoubtedly true. But the American people, in voting for a candidate, cannot – and indeed would not want to – excuse a potential future violation of the Constitution by that candidate.

President-elect Trump's attempt to imply that because he won the election the Constitution somehow does not apply to him is irresponsible and disrespectful. It would be disrespectful to the Constitution, and it is truly disrespectful to the American people, who are trusting their future, their children, their livelihood, and their safety to the decisions Mr. Trump will make once he becomes President.

We must do everything we can to protect our Constitution, our democracy, and the American people from such recklessness.

Mr. President, the aim of my Resolution is straightforward. It takes a strict interpretation of the plain words of the Constitution and supports the traditional values and practices adopted by previous presidents.

It simply calls on President-elect Trump to follow the precedents established by prior presidents and convert his assets to simple, conflict-free holdings; adopt blind trusts managed by truly independent trustees with no relationship to Mr. Trump or his businesses; or to take other, equivalent measures.

It calls upon the President-elect to refrain from using the powers or opportunities of his position for any purpose related to the Trump Organization.

And it makes it clear that if Mr. Trump does not take appropriate action to sever his ties to his businesses, Congress will have no choice – given the oath to protect and defend the Constitution that each and every Member has taken – but to view any dealings that Mr. Trump has through his companies with foreign governments or entities owned or controlled by foreign governments as a potential violation of the Emoluments Clause. As Richard Painter observed, “It should send a clear message to Mr. Trump that he should divest his assets, and that he will regard dealings with his companies that he owns abroad and any entities owned by foreign governments as a potential violation of the Emoluments Clause unless he can prove it was an arm’s-length transaction.” It makes it clear to President-elect Trump that we care about our Constitution and our democracy – and that the American people really are watching. And that we won’t be distracted from caring about these things.

I want to close by observing that, because of strong feelings and passions generated by recent elections, some might be tempted to view this resolution and its aims through a distorting prism of politics. Nothing could be further from the truth.

I strongly support a smooth transition between the Obama administration and the Trump administration. I want the Trump administration to have the support from Congress to succeed on behalf of the American people, but when Mr. Trump deviates from

his Constitutional responsibilities or recommends policies that are contrary to the core values of our nation, members of Congress have an obligation to speak out and act.

I stand here today because I believe that Congress has an institutional, constitutional obligation to ensure that the President of the United States, whomsoever that is, does not violate our Constitution, acts lawfully, and is discharging the obligations of the office based on the broad interests of the American people and not his or her own narrow, personal interests.

My Resolution is not intended to *create* a misunderstanding or crisis, but to *avoid* one, so that President-elect Trump can put aside any appearance of impropriety and devote himself to the good work on behalf of the American people.

We owe it to President-elect Trump to make it very clear what our expectations are ahead of his Inauguration Day. Why? So that we can avoid a Constitutional crisis. Such a crisis would not serve in the best interests of the President, Congress, or the American people. Mr. President, I yield the floor.

#